

**INTHEUNITEDSTATESDISTRICTCOURT
FORTHEEASTERNDISTRICTOFPENNSYLVANIA**

THE TRAVELERS INDEMNITY	:	CIVIL ACTION
COMPANY,	:	
	:	
Plaintiff,	:	
	:	NO.01-CV-78
	:	
v.	:	
	:	
STEPHEN H. WARD, and	:	
SALLY FELICIANO,	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

September 20, 2002

Presently before the Court are Defendants' Motion for Summary Declaratory Judgment, Defendants' Motion for Sanctions Pursuant to Fed. R. Civ. P. 11 and Plaintiff's Motion for Summary Judgment. For the reasons stated below, Defendants' Motion for Summary Declaratory Judgment is **GRANTED**, Defendants' Motion for Sanctions Pursuant to Fed. R. Civ. P. 11 is **DENIED** and Plaintiff's Motion for Summary Judgment is **DENIED**.

I. BACKGROUND

On June 26, 1999, Defendant Stephen Ward ("Ward") and his wife Janet Ward had a backyard barbecue at their home. In attendance were the Ward's, their three children, Mrs. Ward's mother and the Ward's neighbor, Defendant Sally Feliciano ("Feliciano"). As it was a hot summer day, the attendees were cooling themselves off with water guns which they filled in an approximately three-foot high inflatable kiddie pool owned by the Wards.

At one point, while Feliciano was filling her water gun, Ward believed that she was going to get him wet, so he decided to dunk her in the pool. When Feliciano finished filling her water gun, she went behind Ward. Ward turned around and grabbed her, interlocking their arms, and threw her into the pool. Ward landed on top of Feliciano in the water. He heard a loud crack under the water, which he later realized was Feliciano's left arm breaking. Feliciano got up from the pool screaming and holding her dangling arm. Ward quickly took Feliciano to St. Luke's Hospital where she was admitted for emergency surgery for a bicondylar fracture of the distal humerus with displacement. She suffered a permanent, residual injury as a result of this event.

Feliciano filed suit against Ward in the Court of Common Pleas of Northampton County, Pennsylvania, seeking damages for bodily injury. As a result, Ward filed a claim with his insurance company, Travelers Indemnity Company ("Travelers" or "Plaintiff"), seeking a defense and indemnification by Travelers. At the time of the incident, Ward had a homeowner's insurance policy with Travelers, which covered personal liability claims for "bodily injury" caused by an "occurrence". The policy defined an occurrence as "an accident, including continuous or repeated exposure to substantially the same generally harmful conditions which results, during the policy period, in bodily injury". Ward's Homeowners Policy, Definitions, p. 1.

In a reservation of rights letter of August 16, 2000, Travelers denied coverage, claiming that the intended harm exclusionary clause of the policy precluded Ward from being entitled to a defense and indemnification. Travelers later argued that it did not rely on this exclusion, but rather, did not grant coverage because the incident did not constitute an

“occurrence” as defined by the policy. Ward and Feliciano claim that Ward neither expected nor intended to injure Feliciano, and that the injury was an accident. As such, Defendants believe the incident falls within the policy’s definition of an occurrence and should trigger coverage by Travelers.

Travelers filed a Declaratory Judgment Complaint against both Ward and Feliciano and a subsequent Motion for Summary Judgment. Feliciano filed a Motion to Dismiss, which this Court denied. Feliciano then filed a Motion for Summary Declaratory Judgment and a Motion for Sanctions Pursuant to Fed. R. Civ. P. 11. Ward later joined in both of Feliciano’s pending motions.

II. STANDARD OF REVIEW

A. Motion for Summary Judgment

A motion for summary judgment will be granted where all of the evidence demonstrates “that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). A dispute about a material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Since a grant of summary judgment will deny a party its chance in court, all inferences must be drawn in the light most favorable to the party opposing the motion. U.S. v. Diebold, Inc., 369 U.S. 654, 655 (1962).

The ultimate question in determining whether a motion for summary judgment should be granted, is “whether reasonable minds may differ as to the verdict.” Schoonejongen v. Curtiss-Wright Corp., 143 F.3d 120, 129 (3d Cir. 1998). “Only disputes over facts that might

affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” Anderson, 477 U.S. at 248.

B. Motion for Sanctions Pursuant to Fed. R. Civ. P. 11

Fed. R. Civ. P. 11 reads:

(b)...By presenting to the court...a pleading, motion or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, -(1) [the pleading, motion or other paper] is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denial of factual contentions are warranted on the evidence or, if specifically so identified, are reasonable based on a lack of information or belief.

(c)(1)(A)...A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It...shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected.

Fed. R. Civ. P. 11(b) and (c)(1)(A).

Bad faith is not required in order to impose Rule 11 sanctions. Martin v. Brown, 63 F.3d 1252, 1264 (3d Cir. 1995). “The correct Rule 11 inquiry is ‘whether, at the time he filed the complaint, counsel... could reasonably have argued in support’ of his legal theory.” Pensiero v. Lingle, 847 F.2d 90, 96 (3d Cir. 1988). An attorney’s conduct should be tested under a standard of what was “objectively reasonable under the circumstances”. Simmerman v. Corino, 27 F.3d 58, 62 (3d Cir. 1994). “To comply with this standard, counsel ‘must conduct a reasonable investigation of the facts and an normally competent level of legal research to support the presentation’.” Id. Simply failing to withstand a motion for summary judgment or a motion to dismiss is not proof enough to establish a Rule 11 violation. Id. “[O]nly if ‘the filing of the complaint constituted abusive litigation or misuse of the court’s process’” is there a sufficient basis for sanctions. Id.

III. DISCUSSION

A. Defendants’ Motion for Summary Declaratory Judgment and Plaintiff’s Motion for Summary Judgment

Defendants, in filing their Motion for Summary Declaratory Judgment, relied upon Plaintiff’s August 16, 2000 reservation of rights letter, which stated that Ward’s coverage was denied because of the intended harm exclusionary clause contained in his policy. Ward’s policy states that “medical payments to others do not apply to bodily injury or property damage which is expected or intended by any insured”. Ward’s Homeowners Policy, Section II- Exclusions, Coverage E, p. 15. Defendants argue that there is no question that Ward’s conduct was accidental and the injury inflicted upon Feliciano in no way constituted an expected or intended harm.

In its response brief, Plaintiff contends that the intended harm exclusionary clause is not the basis for its denial of coverage for Ward. Rather, Plaintiff argues that Ward's conduct was not an "occurrence", as defined by the policy, because his act of throwing Feliciano into the pool was intentional. Plaintiff contends that, since the policy only covers bodily injury caused by an occurrence, there is no coverage in this instance. Plaintiff's response brief focuses on the argument that Plaintiff is not precluded from raising an occurrence defense, even though it had not raised this defense in its reservation of rights letter. Plaintiff argues that an insurer can raise additional defenses to coverage other than those initially made in a reservation of rights letter.

The Court agrees that Plaintiff is entitled to raise a new defense to coverage that it did not originally raise. See Nationwide Mutual Ins. Co. v. Nixon, 682 A.2d 1310, 1314 (Pa. Super. 1996). However, the Court finds that it does not matter which of these arguments Plaintiff asserts, because both hinge upon whether Ward's conduct was intentional. This is an issue that Plaintiff fails to discuss properly in its reply brief or in its Brief in Support of Plaintiff's Motion for Summary Judgment. Plaintiff does not define intentional conduct or accident in these briefs. Plaintiff merely alleges that Ward repeatedly admitted that his act was intentional, and, as such, his act does not constitute an occurrence or an accident.

As Plaintiff properly points out in its Brief in Support of Plaintiff's Motion for Summary Judgment, it is generally the role of the Court and not of a jury to interpret an insurance policy. Standard Venetian Blind Co. v. Am. Empire Ins. Co., 469 A.2d 563, 566 (Pa. 1983). In so doing, the Court must give effect to language that is clear, but where a policy provision is ambiguous, the Court must construe the provision in favor of the insured and against the insurer. Id. In Ward's policy, an occurrence is defined as "an accident...which results...in bodily

injury”. Ward’s Homeowners Policy, Definitions, p. 1. The term accident is not defined in the policy. When undefined language in a policy is clear and unambiguous, the Court must give such language its “ordinary and popular meaning”. Eddystone Fire Co. v. Continental Ins. Co., 425 A.2d 803, 805 (Pa. 1981). Black’s Law Dictionary defines an accident as “an unusual or unexpected result attending the performance of a usual act or event”. Black’s Law Dictionary 14 (Special Deluxe 5th ed. 1979).

As Defendants’ Brief in Support of Defendants’ Motion for Summary Declaratory Judgment indicates, and as Plaintiff does not dispute, Ward intended to dunk Feliciano in the pool, but he did not intend nor expect to injure her. “An insured intends injury if he desired to cause the consequences of his act or if he acted knowing that such consequences were substantially certain to result.” Wiley v. State Farm Fire & Cas. Co., 995 F.2d 457, 460 (3d Cir. 1993). In determining the insured’s intent, the Court is to apply a subjective standard. Kirkpatrick v. AIU Ins. Co., 204 F.Supp.2d 850, 854 (E.D. Pa. 2002). “Thus it is not sufficient that the insured intended his *actions*; rather, for the resulting injury to be excluded from coverage, the insured must have specifically intended *to cause harm*.” Id.

As it becomes less likely that the resulting injury would be a consequence of the insured’s act, and there is not a substantial certainty of the consequence, the insured’s conduct no longer can be described as intended conduct. Instead, the conduct constitutes reckless behavior. United Services Auto. Ass’n v. Elitzky, 358 Pa. Super. 362, 376 (1986). “[C]onduct which is reckless... does not equate to intentional conduct, but, rather, constitutes an accident or occurrence.” Kirkpatrick, 204 F.Supp.2d at 854.

Although Ward clearly inflicted an injury upon Feliciano, his act of “dunking” her was merely a playful prank with unintended consequences. Ward and Feliciano, as well as the others at the bar because that day, had all been engaging in harmless games throughout the day. Ward’s behavior was an extension of this playful behavior. He exhibited no ill will toward Feliciano. This was certainly not an “assault” or an “attack” on Feliciano as the Plaintiff attempts to make the Court believe. There is no evidence to dispute the fact that the injury was an accident, and therefore an occurrence under the terms of Ward’s policy. Accordingly, viewing the inferences in a light most favorable to Plaintiff, no reasonable jury could return a verdict in favor of Plaintiff, and Defendants are entitled to judgment as a matter of law. Defendants’ Motion for Summary Declaratory Judgment is granted.

B. Defendants’ Motion for Sanctions Pursuant to Fed.R.Civ.P.11

The proper procedure for filing a motion for Rule 11 sanctions is to file this motion separate from all other motions. In addition, this motion should not be filed or presented to the Court unless the opposing party does not withdraw or correct the challenged paper within 21 days of service on that party. Fed.R.Civ.P.11(c)(1)(A).

Fed.R.Civ.P.11 is violated when pleadings are presented for an improper purpose, such as “to harass or to cause unnecessary delay or needless increase in the cost of litigation”. Martin v. Brown, 63 F.3d 1252, 1264 (3d Cir. 1995), *citing* Fed.R.Civ.P.11. In order to comply with Rule 11, counsel “must conduct a reasonable investigation of the facts and an ordinarily competent level of legal research to support the presentation”. Simmerman, 27 F.3d at 62.

By researching the facts of this case and the relevant law, it is difficult to see how Plaintiff can reasonably argue that Ward's conduct was not an accident or an occurrence to be covered under his policy. Accordingly, it is possible that sanctions might be appropriate in this situation. However, the court notes that even if the Plaintiff's conduct was sanctionable, Defendant's Motion for Sanctions Pursuant to Fed. R. Civ. P. 11 was filed in the same document as Defendants' Motion for Summary Declaratory Judgment, contrary to the plain language of that rule. Furthermore, Plaintiff was not given the appropriate 21 day window to withdraw or correct its complaint before Defendants filed their Motion with the Court. Defendants' Motion for Sanctions Pursuant to Fed. R. Civ. P. will be denied.

IV. CONCLUSION

For the foregoing reasons, Defendants' Motion for Summary Declaratory Judgment is granted, and Plaintiff's Motion for Summary Judgment is denied. Further, Defendants' Motion for Sanctions Pursuant to Fed. R. Civ. P. 11 is denied.

An appropriate order follows.

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ORDER

AND NOW, this 20th day of September, 2002, upon consideration of Defendants Stephen Ward's and Sally Feliciano's Motion for Summary Declaratory Judgment and Motion for Sanctions Pursuant to Fed. R. Civ. P. 11 (Docket No. 11), and Plaintiff's response thereto, and upon consideration of Plaintiff Travelers Indemnity Company's Motion for Summary Judgment (Docket No. 13), and Defendants' response thereto, it is hereby **ORDERED** that Defendants' Motion for Summary Declaratory Judgment is **GRANTED**, Defendants' Motion for Sanctions Pursuant to Fed. R. Civ. P. 11 is **DENIED**, and Plaintiff's Motion for Summary Judgment is **DENIED**.

Judgment is entered in favor of Defendants Stephen H. Ward and Sally Feliciano and against Plaintiff Travelers Indemnity Company.

This case is **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.

